employing such means as are essentially necessary for its execution. Section 16 (i) specifically provides for the payment of fees for registration, licensing or otherwise (and one can include regulation or restriction in this phrase) in respect of any of the matters referred to in section 15. Here you get specific authority for the payment of fees in connection with the regulation or restriction of advertising and it matters not whether the fee is payable on the face of the licence or not. By-law 2 prohibits the use of advertisement hoardings or signboards without the licence in writing of the Chairman, and subject to the exemption contained in By-law 7. How else are such matters to be regulated except by licence? There is nothing unreasonable in this By-law.

For the reasons given, I think the Magistrate was right in convicting the accused of the offence charged and the appeal is therefore dismissed.

Appeal dismissed.

[APPELLATE CIVIL JURISDICTION]

POYSER, C.J., McELWAINE, C.J. (S.S.) AND GORDON-SMITH, Ag. J.A.

July 6, 1939.

GAN HONG HOE v. GAN KIM HEE.

[NEGRI SEMBILAN CIVIL APPEAL No. 5 of 1938]

Bankruptcy—capacity of undischarged bankrupt to contract—whether action maintainable against bankrupt on a post bankruptcy contract.

There is nothing in the Bankruptcy Enactment (Cap. 55) which would preclude a creditor from maintaining an action on a contract entered into by him with the debtor after the debtor has been adjudged bankrupt.

CIVIL APPEAL.

Jeff for the Appellant.

Rintoul for the Respondent.

Cur. Adv. Vult.

McElwaine, C.J. (S.S.)—The plaintiff brought an action against the respondent and three others for goods sold and delivered alleging that all four defendants were carrying on business in partnership.

The second defendant filed a defence denying that he was a partner. He also pleaded that he was an undischarged bankrupt.

At the trial it appeared that the respondent was a bankrupt at the date of the issue of the plaint but had obtained his discharge subject to a judgment, by the time the case came for trial.

The debt in respect of which the respondent was sued was contracted after the receiving and adjudication orders had been made against him.

The learned trial judge held that the action was not maintainable against the second defendant, his reasons for so holding were as follows "in my view this section (section 47 of the Bankruptcy Enactment) protects any transaction entered into before the receiving order and invalidates any contract entered into after the date of the receiving order".

I do not understand this section to invalidate anything. What it does do is to declare that certain transactions are not invalidated. Section 47 is one of a group of sections dealing with "effect of Bankruptcy on antecedent transactions". It provides as the marginal note says, for the protection of certain *bona fide* transactions. Clauses (a) (b) (c) (d) are the kind of transactions that can be protected and the two provisos set out what is a requisite stamp of *bona fides*.

In my opinion this section has no bearing on the alleged contract in this case. It would have a bearing in the event of a second bankruptcy after the date of this alleged contract.

The section does not enact that a bankrupt is incapable of making a contract and that is what I understand the argument of the respondent to be.

Section 9 (1) protects the bankrupt against actions for debts provable in bankruptcy. The intention is not to deprive creditors of all their rights but to put them all on an equal footing and to prevent dissipation of assets. The creditor may not sue because he can prove in the bankruptcy. Of course, leave of the Court can be given to sue on terms but nothing in this case turns on this power of the Court. This section 9 relates to causes of action accrued before the receiving order, not to debts which do not become provable until after the receiving order, and consequently could not be proved in the bankruptcy.

I am confirmed in this view by section 30 (iii):

> "An order of discharge shall release the bankrupt from all other debts provable in bankruptcy".

Debts accrued after bankruptcy are not provable in that bankruptcy and are not released by discharge from a prior bankruptcy.

So far as material to this case the Bankruptcy Enactment is the same as the English Bankruptcy Act 1883 and *Cohen v. Mitchell* 25 Q.B.D. 262 which established that a bankrupt can contract is applicable in the Federated Malay States.

As between the parties to this litigation the bankruptcy did not vest the post bankruptcy property in the Official Assignee, and although he may be able to assert a claim over after acquired property the rights of the parties *vis-à-vis* one another are not affected.

Ex parte Rabbidge; In re Pooley 8 Ch. D. 367 and *In re Wigzell* (1921) 2 K.B. 835 cited by Mr. Rintoul do not affect this case. Those cases related to property which at all material times had vested in the trustee, property which was not after acquired property.

The plaintiff is entitled to proceed with his action against the respondent. Whether, if he obtains judgment, he can enforce that judgment without regard to the rights of the Official Assignee is an entirely different matter which does not now fall to be considered. Suffice it to say that the property of the bankrupt divisible amongst his creditors shall comprise all such property as may be acquired by the bankrupt before his discharge—Section 42.

We are not now concerned with how after acquired property is to be distributed, but it continues in the bankrupt until the Official Assignee interferes to claim it. *Dyster v. Randall* (1926) Ch. 932.

The appeal is allowed. The order dismissing the respondent from the suit is set aside.

The appellant will have the costs of the appeal.

Poyser, C.J. (F.M.S.)—I agree.

Gordon Smith, Ag. J.A.—I agree.

Appeal allowed.

[APPELLATE CIVIL JURISDICTION]

McELWAINE, C.J. (S.S.), AITKEN AND MURRAY-AYNSLEY, JJ.

May 19, 1938.

MURUGAPPA CHETTIAR

v.

LETCHUMANAN CHETTIAR.

[SELANGOR CIVIL APPEAL No. 7 of 1937]

Land Code (Cap. 138) S. 149—application for an order for sale—whether a "suit" within section 5 of the Civil Procedure Code—order made without investigation of certain issues—order set aside.

A Summons under section 149 of the Land Code is not a "suit" within the meaning of section 5 of the Civil Procedure Code.

Chettiappa Chetty vs. Raja Abdul Rashid, (1931–32) F.M.S.L.R. 345 applied.

The respondent was the chargee of certain land in the District of Ulu Langat. The chargors were one Meyappa Chettiar and the Appellant. The charge was for $20,000/–, but it had been reduced to $15,500/– by the payment of $4,500/– alleged to have been made by the appellant or his predecessors in interest. The chargors were the proprietors of the land in equal shares, but they were jointly and severally liable for the whole of the money due on the charge. The chargee commenced proceedings under section 149 of the Land Code for the purpose of enforcing his charge by an order for sale. On the hearing of the Originating Summons, the appellant alleged that each of the original chargors, then represented by Meyappa and the appellant, received $10,000/– and that having paid $4,500/– there was due from him a balance of $5,500/–. This sum he paid into Court. The appellant also alleged that Meyappa was the nominee of the chargor. The learned Judge before whom the Originating Summons was heard made an order for sale. The appellant appealed.

Held, that, the Court below not having investigated the allegations of the appellant before making the order for sale, the order should be set aside and the matter remitted to the Court of first instance for the trial of following issues:—

(a) Was Meyappa a nominee of or trustee for the Respondent?

(b) What portion of the mortgage money had been repaid by or on behalf of the owner of the appellant's undivided half share in the property?

CIVIL APPEAL.

Briggs (*Cumarasami* with him) for appellant.

Ramani (*Tan Teow Bok* with him) for Respondent.

Cur. Adv. Vult.

McElwaine, C.J. (S.S.)—Two main points are raised on this appeal: first, that owing to an Originating Summons of 1932 between the predecessors in interest of the parties to this dispute being undisposed of, an order for sale under section 149 of the Land Code cannot be made.

In my opinion a summons for an order for sale is not a suit within the meaning of section 5 of the Civil Procedure Code.

The Legislature has provided that a chargee shall have certain rights in case of default of payment. These included distraining for rent and selling the land charged both proceedings requiring the intervention of the Court, but in neither case does the proceeding appear to be a suit.

The Court Order does not confer a right to the money due, it merely ensures that a right shall not be enforced without the leave of the Court. The question has already been settled in *Chettiappa Chetty v. Raja Abdul Rashid,* (1931–2) F.M.S.L.R., 345.

The second point was that while the appellant and one Meyappa are the registered proprietors of this land, Meyappa is a mere nominee of the respondent.

This point becomes of importance because the appellant claims that of the $20,000/– due on the original charge he has paid off $4,500/–, leaving the